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Establishing institutional liability in child sexual abuse cases: Special relationships and negligence

When institutions fail to protect children, the harm is profound. This article outlines how to establish duty, prove breach and hold institutions accountable.

By Neda Saghafi

I represent child survivors in civil sexual abuse cases against institutional actors such as schools, daycare centers and youth programs. I do this work with purpose. As a former teacher, I have seen the trust that families place in schools and child-serving programs. Parents send their children into these spaces with the belief that their children will be supervised, protected and treated with care. That belief is justified. When an institution fails, the harm reaches far beyond one incident. It affects a child's sense of safety and a family's trust in systems. Civil litigation can expose what went wrong and force change, and I approach my cases with that perspective in mind. I seek justice for the survivors and their families, and I seek safer systems for the children who follow. This article addresses one path to establishing duty through the special relationship between the institution and the child, and then turns to common negligence theories used to establish breach. It also addresses negligence per se based on an institution's failure to report known or suspected child abuse.

A path to establishing institutional liability:

Special relationships and duty
One path to establishing duty is the special relationship doctrine. When institutions are entrusted with



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children, they assume duties similar to those of a parent, and parents rely on that undertaking—creating an affirmative duty of care to protect children from foreseeable harm. That duty includes protection from sexual abuse by third-party tortfeasors within the institution's control.

Once that duty is established, common theories used to demonstrate breach include negligent hiring, supervision, and retention, and negligent supervision.

Negligent hiring, supervision and retention

This claim arises when the institution placed or retained an unfit individual (the perpetrator tortfeasor) in a position that exposed children to harm. The cause of action centers on notice. Generally, plaintiffs need to demonstrate that the institution knew, or should have known, facts demonstrating that the tortfeasor posed a risk of sexual misconduct.

In establishing notice, patterns matter. A series of smaller warnings

tied to the same tortfeasor can demonstrate risk. Boundary violations, favoritism, private contact and rule-breaking often appear before abuse is reported. The institution's response to those warnings is critical. The central question is whether the institution had enough information to act and failed to do so.

Documentary evidence includes:

- Hiring materials, applications and references
- Background checks and training records

- Performance reviews and discipline
- Prior complaints (formal and informal)
- Internal emails, notes and incident reports

Negligent supervision of a minor

This negligence claim arises when the institution failed to provide reasonable supervision over the child. Common examples that I regularly see in my practice include leaving a child alone with the tortfeasor teacher behind closed doors in the classroom, allowing the tortfeasor coach to have one-on-one access to a child in an office or locker room, or allowing the tortfeasor youth worker to accompany a child into the restroom. These fact patterns raise the same question: Did the institution fail to adequately supervise the children in its care?

Documentary evidence includes:

- Supervision policies and child-to-adult ratios
- Staff assignments and schedules
- Facility layouts and access points
- Surveillance systems and footage
- Sign-in and sign-out procedures

Negligence per se:

Failure to report

The agents of many institutional actors are mandated reporters. Teachers, guidance counselors and childcare workers have a legal duty to report known or suspected abuse. A failure to report can support a negligence per se claim.

This cause of action establishes that, despite personal knowledge or reasonable suspicion of child abuse, the institution failed to report the abuse to the county child welfare department or local law

enforcement. Establishing when the institution knew or suspected the abuse is critical. A delayed report can demonstrate that the institution attempted to manage the issue internally instead of properly alerting authorities.

Documentary evidence includes:

- Mandated reporter training records
- Signed acknowledgments of duties
- Internal reports and disclosures
- Emails, messages and meeting notes
- Records showing whether a report was made

Conclusion

Civil litigation serves a broader purpose. It brings failures into the open and places responsibility where it belongs. It can force institutions to change policies, improve super-

vision and follow reporting laws. The evidentiary burden in these cases lies in showing that the institution failed to protect the children in its care. These cases are about accountability, safety and stronger systems to protect children.

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